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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,910	09/24/2003	Jack M. Holtzman	010088C1	6518
23596 7590 04/15/2010 QUALCOMM INCORPORATED 5775 MOREHOUSE DR. SAN DIEGO, CA 92121				
EXAMINER				
WONG, BLANCHE				
ART UNIT		PAPER NUMBER		
2476				
NOTIFICATION DATE		DELIVERY MODE		
04/15/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/670,910

**Applicant(s)**

HOLTZMAN ET AL.

**Examiner**

BLANCHE WONG

**Art Unit**

2476

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on RCE filed January 29, 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 and 14-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-11 and 16-23 is/are allowed.
- 6) ☒ Claim(s) 14 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB006)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Paper No(s)/Mail Date \_\_\_\_\_
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. **Claims 14 and 15** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 14 and 15 recites a computer-readable medium (CRM). However, the medium is not defined to exclude transitory media such as signals or transmission media (Signals are non-statutory subject matter, MPEP 2106.IV.A.1). Moreover, Sections of the Specification teaches "memory storage device" in para. [0008] and "A software module may reside in Random Access Memory, RAM, flash memory, Read Only Memory, ROM, Electrically Programmable ROM, EPROM, Electrically Erasable Programmable ROM, EEPROM, registers, hard disk, a removable disk, a Compact-Disk ROM, CD-ROM, or any other form of storage medium known in the art" in para. [0032]. First, the Specification teaches a memory storage device or storage medium, which is quite different from CRM. Second, the Specification fails to define CRM in specific terms. The terminology "... or any other form of storage medium known in the art" is an open-ended listing and is not a definition of the term CRM. Third, even if CRM can be defined by "... or any other form of storage medium known in the art", CRM can be interpreted broadly to include both transitory and non-transitory. CRM is not defined to exclude transitory media. Therefore, CRM is non-statutory. The 101 rejection can be

overcome if 1) the claim recites "non-transitory" medium and 2) the specification is amended to recite that the medium is "non-transitory" respectively.

### ***Allowable Subject Matter***

3. **Claims 1-11 and 16-23** are allowed.
4. The following is a statement of reasons for the indication of allowable subject matter:

With regard to claims 1, 16 and 23, the prior art of record fails to anticipate or make obvious an apparatus, an apparatus and a base station apparatus comprising all the limitations of the method as recited in claim 1 in U.S. Pat No. 6,657,980.

With regard to claim 8, the prior art of record fails to anticipate or make obvious an apparatus and a computer readable medium, comprising: "... calculating a priority function of at least *a portion of the pool of users*; ... scheduling *a first set of users* having pending data transactions from the portion of the pool of users; ... receiving the request indicators from the portion of the pool of users; ... updating *priority functions of the first set of users as the rate request indicators [from the portion of the pool of users] divided by a function of the projected throughput and a fairness parameter.*"

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BLANCHE WONG whose telephone number is

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(571)272-3177. The examiner can normally be reached on Monday through Friday, 830am to 530pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on 571-272-3795. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Blanche Wong/  
Examiner, Art Unit 2476  
April 9, 2010

/Salman Ahmed/  
Primary Examiner, Art Unit 2476